IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

CRP.No. 427 of 2005()

OPELE.32/2001 of ADDL. DISTRICT COURT, THODUPUZHA

.....

REVN. PETITIONER: RESPONDENT.

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM

BY ADV. SRI.N.N.SUGUNAPALAN, SC, KSEB

RESPONDENT: PETITIONER.

GEORGE, S/O.ANTONY, CHAKINILKUNNEL HOUSE
MUNIYARA P.O. KONNATHADY VILLAGE, UDUMBANCHOLA
TALUK.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P. NO. 427 OF 2005

Dated this the 10th day of December, 2007

ORDER

Heard.

This revision petition is preferred against the award of the Additional District Judge, Thodopuzha in O.P.(Elect.) 32/2001 whereby the Additional District Judge has awarded an enhanced compensation of Rs.23,919/-. The grievance of the revision petitioner is that the annuity taken is 5% relying upon the decision of this court reported in **Kumba Amma v. K.S.E.B** [2000 (1) KLT 542]. It is seen from Para. 12 of the award. Learned counsel had brought to my notice the decision of the Apex court in **K.S.E.B. v. Livisha [2007 (3) KLT 1]** wherein the court held that each case has to be decided on the facts and circumstances of that case. The Apex court held as follows:

> "*The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use*

> *the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."*

2. In the light of the enunciated principles referred to above, it appears that the matter requires reconsideration for the reason that additional documentary and oral evidence may be necessary to establish the case. Therefore, the award under challenge is set aside and the matter is remitted back to the court below for fresh consideration, after affording equal opportunities to both sides to produce the oral and documentary evidence in support of their respective contentions and decide the matter in accordance with the principles laid down in **K.S.E.B. v. Livisha** [2007 (3) KLT 1].

Parties are directed to appear before the court below on 21.1.08.

M.N.KRISHNAN, JUDGE

vps